

R E P O R T S

Academic Freedom and Tenure THE CATHOLIC UNIVERSITY OF AMERICA¹

The case investigated by the undersigned committee contains much that is unusual in the Association's experience. It involves, first of all, a professor—the Reverend Charles E. Curran—who has not been dismissed from his position but who, with conditions imposed upon his teaching that he considers unacceptable, has chosen to take a leave of absence and teach elsewhere. Although the events of primary interest in the case occurred within the past three years, they can best be understood in the context of a history spanning more than two decades. The case has been the subject of two books and of countless magazine and newspaper articles both in this country and abroad, and aspects of it have been argued at length before a faculty committee and a superior court; few Association cases, it may be said, have been so widely publicized or so profusely documented. Finally, the case arose and developed at a university with a governance structure that has no exact counterpart in this country, even among other Catholic institutions.

The Catholic University of America, proposed in 1884 by the Catholic bishops of the United States, was established as a national university in 1887 with the approval of Pope Leo XIII, and was incorporated in the District of Columbia in the same year. Providing graduate studies in theology from the beginning, it has expanded over the years to include nine faculties or schools and a University College, with more than 7,000 students and 400 faculty members. In 1900, when it was one of the fourteen American institutions offering doctoral degrees, it became a member of the Association of American Universities. It instituted undergraduate programs in 1904, and it has been accredited

¹The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff, and, as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A it was subsequently sent to the faculty member at whose request the inquiry was conducted, to the administration of The Catholic University of America, to the chapter president, and to other persons concerned in the report. In the light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

by the Middle States Association of Colleges and Schools since 1921, when the Middle States Association began its work. Its theological program is accredited by the Association of Theological Schools in the United States and Canada.

The By-Laws of the University—previously called Statutes—place “ultimate responsibility for governance and sole responsibility for fiscal affairs of the University” in a board of trustees. The board has forty elected members, divided between twenty laypersons and twenty clerics, sixteen of whom must be members of the National Conference of Bishops. Three elected faculty representatives are permitted to attend board meetings without vote and without the right to participate in executive sessions. The Archbishop of Washington serves *ex officio* as chancellor of the university, and both he and the president of the university, who is elected by the board, serve *ex officio* as members of the board. The present chancellor is James Cardinal Hickey. The president is the Reverend William J. Byron, S.J., who was elected to his office in 1982.

The by-laws also provide for an academic senate, which shares with the president “the immediate responsibility for the academic governing of the University by establishing, maintaining, supervising and in general being responsible for the academic policies of the University.” Senate actions require the president's approval, in the absence of which the senate may submit any matter directly to the board.

The chancellor has a special relationship with the university's three ecclesiastical faculties: the School of Philosophy, the Department of Canon Law, and the Department of Theology. Since 1981, these faculties have been governed by a set of “Canonical Statutes,” which require that the president, as the final step in the appointment of an individual to an ecclesiastical faculty, forward all relevant information to the chancellor for the conferral of a canonical mission or for permission to teach. Those who teach disciplines in these faculties relating to faith and morals must have a canonical mission, which entitles them “to teach in the name of the Church”; others, including non-Catholics, must have the chancellor's permission to teach. Once

granted, the canonical mission or permission to teach may be withdrawn by the chancellor for "only the most serious reasons," with the affected faculty member entitled to due process in accordance with the

university's by-laws. Professor Curran, a tenured professor in the Department of Theology, was thus considered to be subject to these regulations.²

THE BACKGROUND

Professor Curran was graduated with a Bachelor of Arts degree from St. Bernard's College, Rochester, New York, in 1955, and continued his studies at Rome's Pontifical Gregorian University, which awarded him the Licentiate in Sacred Theology in 1959 and the Doctorate two years later. In 1961 he was also awarded the Doctorate in Sacred Theology by the Academia Alfonsonia in Rome, with a specialty in moral theology. He began his teaching that fall at St. Bernard's Seminary, where he was Professor of Moral Theology, and in 1965 he was appointed to an assistant professorship in the Catholic University of America's School of Theology, which later became the Department of Theology in the School of Religious Studies. His teaching was in the field of moral theology. In articles and in his first book, *Christian Morality Today*, published in 1966, Professor Curran established himself as a scholar who subjected accepted views, including noninfallible teachings of the Church, to careful scrutiny and did not hesitate to publicize his conclusions. An interest in sexual ethics led him specifically to dissenting views on such subjects as abortion, birth control, and homosexuality. He was later informed that the Sacred Congregation for the Doctrine of the Faith, the Church's guardian of theological correctness, had opened a "docket" on him during this period.

In the spring of 1967 unanimous recommendations by the School of Theology and the Academic Senate that Professor Curran be reappointed and promoted to an associate professorship were rejected by the university's board of trustees, the large majority of whom at that time were bishops. The events that followed constituted a landmark in the history of American higher education. Responding promptly to the board's rejection, faculty members in the School of Theology denounced the board's action as a violation of academic freedom and voted to withhold their teaching until the board rescinded it. By a vote of 400-18, the full faculty followed with a similar resolution, and, with the students joining in the strike, the university was effectively shut down from April 19 to April 24. On the 24th, the chancellor, Patrick Cardinal O'Boyle, announced that the board had rescinded its decision. Professor Curran was accordingly promoted to an associate professorship and given a three-year contract.

On July 30, 1968, Professor Curran was the spokesman for a group of eighty-seven Catholic theologians who publicly dissented from that part of Pope Paul VI's recently issued encyclical, *Humanae Vitae*, which asserted a categorical ban on all types of artificial contraception. The statement of the initial group was ultimately endorsed by more than 600 Catholic academicians with qualifications in the sacred sciences, including twenty from Catholic University. Acting on a directive from the board of trustees, which at one point threatened the twenty faculty members with suspension, the Catholic University administration, with the advice and cooperation of the Academic Senate, estab-

lished a five-member board of inquiry to determine whether the faculty members had violated their responsibilities to the university or their commitments as teachers of theology or other sacred sciences. After an exhaustive investigation, including the interrogation of thirty-eight witnesses and the examination of over 3,000 pages of material, the board of inquiry issued its report, which was endorsed unanimously by the Academic Senate.³ Although the report, known as the Marlowe Report, was received by the board of trustees on April 13, 1969, the board did not approve or disapprove it. In June of that year, the board of trustees did vote to "accept" the report's finding that the twenty faculty members had acted with academic propriety, and it took no action against them.

The board of inquiry found that the July 30 statement represented "a responsible theological dissent" from the teaching of the encyclical and that its contents and style were well within the bounds of academic propriety. "The right of a theological scholar," it asserted, "to dissent from noninfallible teachings of the magisterium [the collective teaching authority of the Catholic Church] is well documented, most recently in the 15 November, 1968, pastoral letter of the American Bishops."⁴ A faculty member's right, it added, to determine the content of his public statement without fear of reprisal, even though the statement may embarrass the institution in its relationship with various constituencies, "cannot be challenged." The board of inquiry also asked the university to assure the academic community that it would not in the future resort to even a threat of suspension, much less actual suspension, without first according the faculty member academic due process.

It recommended that, in the future, similar cases be dealt with according to the norms of academic freedom contained in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, the 1964 *Committee A Statement on Extramural Utterances*, and the 1967 "Report and Draft Recommendation of a Special Committee on Academic Freedom in Church-Related Colleges and Universities." As the most suitable norms for institutions at which theology is taught, it cited those of the Association of Theological Schools, which

²Professor Curran has insisted that he was not subject to the regulations, since he had been granted tenure as a member of the Department of Theology before the adoption of the Canonical Statutes in 1981. The investigating committee, however, has proceeded on the understanding, shared by the administration and the Academic Senate's *ad hoc* committee which heard his case, that Professor Curran and others in the ecclesiastical faculties were assumed to have a canonical mission, whether or not it was formally conferred.

³The board of inquiry simultaneously issued a briefer Summary Report, which was published in the *AAUP Bulletin* (Summer 1969, pp. 264-266).

⁴According to the bishops' letter entitled "Human Life in Our Day," "The expression of theological dissent from the magisterium is in order only if the reasons are serious and well-founded, if the manner of the dissent does not question or impugn the teaching authority of the Church and is such as not to give scandal."

incorporate the 1940 *Statement's* provisions for academic freedom.

In January 1970, the university, in its self-evaluation report for the Middle States Association of Colleges and Schools, stated that its standards for tenure and due process were consonant with those advocated by the American Association of University Professors. It also incorporated in the report a statement approved by the Academic Senate on June 26, 1969, for inclusion in a forthcoming edition of the faculty handbook:

A university conceived as a community of scholars must be free of arbitrary and extrinsic constraints, be they civil or ecclesiastical. Institutional autonomy and academic freedom are essential conditions of university life and growth. Accordingly, the Catholic University acknowledges in its Statutes, in its affiliation with academic and educational associations, and in its traditions, that the academic freedom of members of its Faculties is an essential condition for the attainment of truth. It therefore endorses the policy

statements and regulations of the American Association of University Professors concerning academic freedom and tenure as expressed in 1940 and again in 1968.⁵

Throughout the late 1960s and the years that followed, Professor Curran continued to teach, write, speak, and publish, so that by 1979 eleven books wholly by him had appeared, plus five others which he edited or co-edited and one, *Dissent in and for the Church*, in which he and others reviewed the 1968 controversy concerning *Humanae Vitae*. He served as president of the Catholic Theological Society of America for 1969-70 and president of the American Society of Christian Ethics for 1971-72. In 1971 he was promoted to the rank of Ordinary [full] Professor at Catholic University and granted tenure, and in 1972 he became the first recipient of the Catholic Theological Society's John Courtney Murray Award for distinguished achievement in theology.

THE LAST DECADE

On July 13, 1979, Franjo Cardinal Seper, prefect of the Sacred Congregation for the Doctrine of the Faith, wrote Professor Curran from the Vatican to inform him that his views were under scrutiny, and he attached sixteen pages of "observations" describing what the Sacred Congregation considered "principal errors" in Professor Curran's published works. Professor Curran responded to the "observations" on October 26, 1979, concentrating on the "fundamental" observation, that is, that he misconceived "the specific competence of the authentic Magisterium" in matters of faith and morals and thus mistakenly justified a right to public dissent.⁶ After some intervening correspondence, Professor Curran, on June 21, 1982, addressed the specific observations related to his views on marriage and sexual ethics. On February 10, 1983, Joseph Cardinal Ratzinger, who had replaced Cardinal Seper as prefect of the Sacred Congregation, informed Professor Curran that his responses "on the whole" had not proved satisfactory, and on May 10, 1983, he sent a second set of "observations," to which Professor Curran responded in letters of August 10, 1983, and August 24, 1984.⁷

On September 17, 1985, Cardinal Ratzinger informed Professor Curran that his responses had been carefully studied and that the Sacred Congregation was "in a position to bring this inquiry to a conclusion."

Those who teach in ecclesiastical faculties [Cardinal Ratzinger wrote] do not teach on their own authority but by virtue of the mission they have received from the Church. . . . In order to guarantee this teaching, the Church claims the freedom to maintain her own academic institutions in which her doctrine is reflected upon, taught and interpreted in complete fidelity. This freedom of the Church to teach her doctrine is in full accord with the students' corresponding right to know what that teaching is and have it properly explained to them. This freedom of the Church likewise implies the right to choose for her theological faculties those and only those professors who, in complete honesty and integrity, recognize themselves to be capable of meeting these requirements.

Cardinal Ratzinger then listed the areas noted in his "observations" in which, he wrote, Professor Curran had "clearly affirmed" that his positions were "in open contrast with the teaching of the Magisterium":

⁵The reference is to the 1968 revision of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*. As counsel for Catholic University has subsequently emphasized, this statement on academic freedom was never officially approved by the board of trustees. Still, a similar statement was included a decade later in the university's 1980 self-evaluation report for the Middle States Association.

⁶Professor Curran called attention to the relationship of Catholic theologians to the magisterium, particularly as he had outlined it in *Dissent in and for the Church*. His "position on the hierarchical Magisterium," he asserted, "is truly Catholic and contains nothing opposed to Catholic faith"; and "the fact of public dissent is in no way a rebellion against Church teaching but rather is a form of critical loyalty."

⁷The following are some of the published comments of Professor Curran that the Sacred Congregation considered erroneous:

On Divorce: "I conclude that the Roman Catholic Church should change its views on divorce. Divorce and remarriage must be accepted as a reality in our world that at times can take place even without personal guilt on the part of the individuals involved. Indissolubility or permanency is a radical demand of the gospel that is seen as a goal but not an absolute norm."

On Abortion and Euthanasia: "My own teaching constitutes a dissent

from the authoritative Church teaching on the two questions of when does human life begin and how can one solve conflict situations, but my dissent is not all that great. Others might propose a more radical solution."

On Homosexuality: "The theology of sin in terms of fundamental option and modern psychological knowledge indicates that most often homosexual actions do not involve the person in grave or mortal sin. . . . [In] the cases in which modern medical science cannot help the homosexual. . . it seems to me that for such a person homosexual acts might not even be wrong."

On Sexual Intercourse Outside Marriage: "I personally do see occasions where sexual intercourse outside marriage would not be wrong, but the exceptions are quite limited. . . ."

On Contraception: "I do not think that contraception violates an ideal; nor does it involve premarital or ontic evil. In my judgment. . . too much importance [is given] to the physical aspects of the act. . . ."

On Sterilization: "In my judgment sterilization involves basically the same moral issues as contraception. Whoever dissents from the teaching on contraception logically must also dissent from the prohibition of direct sterilization."

On Masturbation: "There is no blanket gravity that can be assigned to every act of masturbation."

The first area of dissent is with regard to the principle of the Church's teaching according to which every marital act must remain open to the transmission of life, and therefore artificial contraception and direct sterilization are forbidden as intrinsically wrong. . . .

Likewise, regarding the issues of abortion and euthanasia, the teaching of the Church, from which you dissent, has been unequivocal, and, despite pressure to the contrary, the Magisterium has recently reaffirmed the sacred and inviolable character of human life from the moment of conception. . . .

With respect to the third area . . . , i.e. masturbation, premarital intercourse and homosexual acts, all the faithful are bound to follow the Magisterium according to which these acts are intrinsically immoral. . . . Whatever the motive may be, the deliberate use of the sexual faculty, outside normal and legitimate conjugal relations, essentially contradicts its finality, the purpose intended by the Creator.

Finally . . . , the teaching of the Council of Trent on the indissolubility of sacramental and consummate marriage was clearly taught by the Vatican Council II, which described marriage as an indissoluble bond between two persons. A Catholic cannot affirm the contrary. . . .

Cardinal Ratzinger invited Professor Curran to reconsider and to retract "those positions which violate the conditions necessary for a professor to be called a Catholic theologian," and he asked that Professor Curran forward his reply to the chancellor of the university within two months.

Professor Curran met on several occasions with Chancellor Hickey and Joseph Cardinal Bernardin, chair of the university's board of trustees, in the hope of effecting a compromise whereby he would agree not to teach, in the foreseeable future, in the field of sexuality in moral theology, about which, as he stated, he had developed no new position and had written only occasionally since 1974. He would also acknowledge the obligation of the Sacred Congregation to criticize and even denounce his work when the Congregation considered it erroneous. In turn he would be permitted to continue as a Catholic theologian in good standing. Chancellor Hickey journeyed to Rome, where he discussed the case with Cardinal Ratzinger at length and with Pope John Paul II in a thirty-minute audience. The compromise was rejected. On March 8, 1986, Professor Curran himself, accompanied by a former teacher, Professor Bernard Häring of the Academia Alfonso, met in Rome with Cardinal Ratzinger, but also failed to gain acceptance of the compromise. In a letter to Cardinal Ratzinger on April 1, he briefly summarized the discussion at the March 8 meeting, noting that he remained convinced of the positions he had adopted and proposing once again a compromise whereby he would continue to teach moral theology but not in the field of sexual ethics.

Cardinal Ratzinger rendered the Congregation's decision on July 25, 1986, noting that the Congregation for Catholic Education agreed with it and that the Pope approved it. "The purpose of this letter," he wrote to Professor Curran,

is to inform you that the Congregation has confirmed its position that one who dissents from the Magisterium as you do is not suitable nor eligible to teach Catholic Theo-

logy. Consequently, it declines your compromise solution because of the organic unity of authentic Catholic Theology, a unity which in its contents and method is intimately bound to fidelity to the Church's Magisterium.

Once again Cardinal Ratzinger enumerated the dissenting positions that the Congregation had contested, omitting only that on sterilization, and he went on to reject Professor Curran's view that, since he dissents only from "noninfallible" teachings of the Church, his positions constitute "responsible" dissent and should therefore be allowed by the Church:

One must remember the teaching of the Second Vatican Council which clearly does not confine the infallible Magisterium purely to matters of faith nor to solemn definitions. *Lumen Gentium* 25 states: . . . when, however, they (the Bishops), even though spread throughout the world, . . . are in agreement that a particular position ought to be held as definitive, then they are teaching the doctrine of Christ in an infallible manner. Besides this, the Church does not build its life upon its infallible Magisterium alone but on the teaching of its authentic, ordinary Magisterium as well.

. . . In any case, the faithful . . . are to give the religious submission of intellect and will to the teaching which the Supreme Pontiff or the college of bishops enunciate on faith or morals when they exercise the authentic Magisterium, even if they do not intend to proclaim it with a definitive act. This you have continued to refuse to do.

In conclusion [Cardinal Ratzinger wrote], this Congregation calls attention to the fact that you have taken your positions as a Professor of Theology in an ecclesiastical faculty at a Pontifical university. In its letter of September 17, 1985, to you, it was noted that . . . the authorities of the Church cannot allow the present situation to continue in which the inherent contradiction is prolonged that one who is to teach in the name of the Church in fact denies her teaching.

On August 18, 1986, Chancellor Hickey presented Cardinal Ratzinger's letter to Professor Curran with a letter of his own. "After careful reflection upon this judgment of the Holy See," he wrote, "a decision approved by the Holy Father, I consider it incontrovertible proof that you can no longer exercise the function of a Professor of Catholic Theology at the Catholic University of America." He stated, accordingly, that he was initiating the withdrawal of Professor Curran's canonical mission, and he reminded Professor Curran of his right to request due process under the university's canonical statutes.

On August 20 the eight members of the executive council of the university's School of Religious Studies issued a statement reaffirming "their respect and support for the Reverend Charles E. Curran as a theologian, scholar, teacher, and priest" and expressing their belief that a resolution of the differences between Professor Curran and the Holy See was "necessary for the health and credibility of theology undertaken in Catholic universities." On the same day Professor Curran issued a statement outlining, among other things, his view of dissent: "I have not proposed," he said,

the possibility and legitimacy of dissent from all non-infallible teaching. In moral matters, all Christians must recognize that the follower of Jesus should be loving,

caring, just, and faithful. My disagreements are on the level of complex, specific actions which involve many conflicting circumstances and situations. . . .

. . . I have defended my dissent as being in accord with the norms laid down by the United States bishops in their 1968 pastoral letter "Human Life in Our Day." The Congregation still must answer the questions I have been asking for six years. Does the Congregation agree with the teaching proposed on dissent by the United States bishops or are they claiming that such teaching is wrong?

Professor Curran was on sabbatical leave of absence from the university during the fall semester of 1986, during which arrangements progressed for an *ad hoc* committee of the Academic Senate to consider the question of withdrawing his canonical mission following his return. At the same time arrangements were under way to have him resume the teaching of moral theology in the Department of Theology.

On December 19, 1986, however, Chancellor Hickey informed Professor Curran by letter that, efforts to have him voluntarily refrain from teaching pending the forthcoming proceedings having failed, he proposed to suspend him from teaching in an ecclesiastical faculty, in accordance with Section V 9 of the Ecclesiastical Statutes: i.e., "In more serious or pressing cases [involving the withdrawal of the canonical mission] the Chancellor, with the concurrence of a majority of the episcopal members of the Board, may suspend the member of the Faculty from teaching in an Ecclesiastical Faculty during the period of investigation." When "the Holy See has expressly declared that you are 'not suitable nor eligible to teach Catholic Theology,'" the chancellor wrote in support of his action, it "is difficult to conceive of a more 'serious reason' to withdraw the canonical mission, or a 'more serious or pressing case' for suspension."

The dean of the School of Religious Studies and the chair of the Department of Theology quickly protested the proposed suspension, pointing out the damage to the theological program by Professor Curran's continued absence and questioning the need for action before the *ad hoc* committee could have an opportunity to pass judgment on the case. The dean suggested alternatives to suspension, either by limiting Professor Curran's courses to students in the non-ecclesiastical degree program in the Department of Theology or by permitting him to teach in the Department of Religion and Religious Education, a non-ecclesiastical faculty with graduate programs. On January 7, 1987, Professor Curran sent two letters to Chancellor Hickey, one protesting the suspension and one suggesting a compromise. "Most of Cardinal Ratzinger's difficulty with me," he wrote in the first of these,

concerns my writing in areas of sexual ethics, and I have not even taught such a course in more than a decade. Thus, if your only basis for suspending me is Cardinal Ratzinger's letter, and if, in turn, his position is based entirely on my writings, you can have no legitimate basis for suspending me from teaching the courses officially announced for the Spring 1987 semester.

In the second letter he proposed that he be moved out of the Department of Theology and become a professor-at-large teaching courses—none of which would be in sexual ethics—"to all students in the University who are not enrolled in ecclesiastical degree programs."

On January 9, ignoring the proposed alternative, the chancellor informed Professor Curran that he was suspending him from teaching in an ecclesiastical faculty pending "the outcome of the proceedings to withdraw your canonical mission." In his reply on the same day, Professor Curran noted that the Ecclesiastical Statutes apply only to ecclesiastical faculties, and he cited the following statement in the preamble to the statutes: "These Faculties, however, are not exclusively ecclesiastical; they also have other programs which do not have canonical effects and to which these Statutes do not apply." The vast majority of students in the Department of Theology, he observed, are in non-ecclesiastical programs; and he added that he had consulted with the chair of his department and that, when he met with the students in his scheduled spring classes, he would "inform them that the students in the ecclesiastical degree programs may not take the courses for credit."

The chancellor rejected Professor Curran's interpretation categorically. "The footnote to this provision," he wrote on January 13, "makes clear that the word 'Faculties' is used to refer to these three academic units of the University [the School of Philosophy, the Department of Canon Law, and the Department of Theology], not to the body of teachers. . . of those schools. . . . In short there are non-ecclesiastical programs in the Department of Theology, but there are no non-ecclesiastical teachers." "In my judgment," the chancellor wrote,

it would be intolerable for an individual who has been denied a canonical mission, or whose canonical mission has been suspended or withdrawn, to function as a Professor of Theology in the Department of Theology at the Catholic University. That is particularly so when, as in your case, the Holy See has issued a final judgment that you are neither 'suitable nor eligible to exercise the function of a Professor of Catholic Theology.'

He insisted as a consequence that Professor Curran inform him by noon of the next day that he was prepared to refrain from teaching the three theology courses. "If you are unwilling to give me this assurance, then I must request that you state your reasons—again by 12:00 noon tomorrow—why I should not proceed to exercise my authority under Canon 812 [of the Canon Law of the Roman Catholic Church] to revoke, suspend or deny the required mandate to teach theological disciplines, based upon the judgment of the Holy See." Under Canon 812, "Those who teach theological subjects in any institute of higher studies must have a mandate from the competent ecclesiastical authority."

Professor Curran was handed Chancellor Hickey's letter at 8:00 p.m. on January 13, and he replied on January 14. Shortly after noon he was informed by the executive vice president that President Byron had authorized cancellation of the three courses he was scheduled to teach in the spring semester. "I object to this action," he wrote to the chancellor, "and to. . . [your] interpretation of the Canonical Statutes. . . . It is clear from the Statutes that the Chancellor has no authority over the non-ecclesiastical degree programs of the University." But even before the cancellation of his courses, Professor Curran stated, the chancellor's letter had caused him to reconsider pressing within the university to teach them: first, because, while he was

appealing in the civil court for its interpretation of the statutes, the students would remain in a state of uncertainty; the second reason was the chancellor's threat to invoke Canon 812, invocation of which, he said, "would threaten the academic freedom and autonomy of Catholic institutions of higher learning in the United States. . . [with] serious consequences for academic accreditation, government funding, and a host of other [important] issues. . . For this reason, leaders of Catholic higher education in the United States have strongly opposed the use of Canon 812 and, to my knowledge, no American bishop has yet invoked the canon to grant the mandate, much less to revoke it."

THE HEARING

The *ad hoc* committee of the Academic Senate began its hearings in April 1987 and issued its report on October 9. Chancellor Hickey, Professor Curran, and the committee itself were represented by legal counsel, and observers from the American Association of University Professors and other interested organizations were permitted to attend.

In preliminary argument, counsel for Chancellor Hickey contended that the July 25, 1986, determination of the Sacred Congregation for the Doctrine of the Faith was binding on the committee; counsel for Professor Curran, on the other hand, contended that the committee should consider countervailing evidence as to whether the Sacred Congregation's determination constituted a "most serious reason" for withdrawal of the canonical mission. Both parties agreed that the committee need not consider the procedural or substantive correctness or error in the Sacred Congregation's determination, and the committee concurred.

The committee did decide, however, to consider whether that determination constituted a "most serious reason" for withdrawal of the canonical mission within the meaning of the Canonical Statutes. It decided also to consider the effects of the withdrawal of the canonical mission and "possible alternatives for implementation in the event that the committee should recommend that the canonical mission should be withdrawn." "We recognize," the committee stated at the outset of its report, that "Professor Curran is an outstanding scholar, teacher, speaker, and writer in his field and that his many years of devoted service at this University entitle him to the highest consideration." Thus, although occasional witnesses testified to Professor Curran's competence, the committee itself accepted it as well established and saw no reason to inquire into it.

Professor Curran and the witnesses in his behalf focused primarily on what they considered, in the words of one witness, the "propriety" of his dissent "within the guidelines of the statement of the American bishops and canon law" and the effect on academic freedom and the university caused by the removal of Professor Curran from theological teaching. The immediate past president of the Catholic Theological Society of America described Professor Curran's reputation as "very solidly of someone who is in the middle of the road, not. . . extreme"; and a professor of Christian ethics from the University of Notre Dame, calling Professor Curran's writings "squarely within the mainstream of contemporary moral theology," described

On January 15 AAUP's Associate General Secretary Jordan E. Kurland, in a letter to President Byron, questioned the appropriateness of suspension under the joint AAUP-Association of American Colleges 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* and the university's regulations, both of which sanction suspension only when there is a threat of immediate harm to the faculty member or others. Attorney Edward Bennett Williams, replying for the university on February 18, asserted that separate procedures in the Canonical Statutes, rather than the university regulation cited by the associate general secretary, apply to a case of suspension from an ecclesiastical faculty.

him as "a responsible moral theologian." The chair of the Department of Theology at Notre Dame stated that "the approaches taken by Professor Curran enjoy widespread respect throughout the theological community," and he praised Professor Curran as "one of the two most respected moral theologians in the United States today." Others noted that Professor Curran had always taken the teaching of the magisterium seriously and been respectful of it. Of two faculty members who had participated in the drafting of the university's Canonical Statutes, one expressed the view that the Congregation's July 25 determination constituted a "most serious reason" for withdrawal of the canonical mission, but only with qualifications pertaining to the basis for the Congregation's decision, the Congregation's process, academic freedom, and the search for other alternatives; the other stated that the Congregation's determination did not require automatic withdrawal of the canonical mission, because Rome had approved the use of the procedures involving the Senate's *ad hoc* committee, but that it would necessarily lead to withdrawal unless either Rome's or Professor Curran's position changed. This witness also expressed a concern that Professor Curran "may be going too close to promoting dissent rather than expressing it."

The committee also viewed eighteen exhibits submitted by Chancellor Hickey and 102 submitted by Professor Curran, plus 141 letters from individuals, faculties, and organizations. Of the letters, the great majority were from members of the College Theology Society and the Catholic Theological Society of America, most of them written to endorse statements of the governing bodies of the respective societies in support of Professor Curran. Some expressed views in opposition to him.

In presenting its conclusions, the committee noted that it had not accepted the chancellor's view that the determination of the Sacred Congregation was "directly and immediately controlling" on its deliberations and actions; to accept that view, it said, would be to act contrary to the language and intent of the Canonical Statutes. Aware of the "potential conflict between the jurisdiction of the Church and the institutional autonomy of the University," as well as the danger that Professor Curran's tenure might be jeopardized or the university be harmed, the committee reminded the board of trustees that the withdrawal of the canonical mission depended not merely "on the force of authority and the arguments for withdrawal

but also on whether there are equal or greater countervailing arguments against withdrawal." It agreed, however, that, from a strictly canonical perspective, the July 25 determination of the Sacred Congregation met the chancellor's burden of establishing "most serious reason" for withdrawing the canonical mission, and it made the following recommendations:

1. The canonical mission of Professor Curran may be withdrawn, provided his other rights are simultaneously affirmed, to wit:
 - a. That he remain a tenured faculty member at the Catholic University of America, with all the rights and privileges to which that status entitles him;
 - b. That he continue to function as a professor in the field of his competence, namely, as a professor in the area of moral theology and/or ethics.
2. If it is deemed impracticable for Professor Curran to continue to teach in the Department of Theology, the Committee recommends that arrangements for a suitable alternative academic position be made before Professor Curran's canonical mission is withdrawn.
3. If the foregoing recommendations cannot be implemented, the Committee would oppose the withdrawal of Professor Curran's canonical mission and recommend against such action. In such circumstances withdrawal of the mission would be unjust to Professor Curran and would be harmful to the University and its mission.

The committee forwarded its report to Chancellor Hickey on October 13, 1987, and on December 14 the chancellor, suggesting that the committee had exceeded its mandate, asked it to review the conditions it had set forth in its recommendations. The committee chair replied on December 21 that the committee had reconsidered and remained convinced that it had not exceeded its mandate: "If removal of the canonical mission, independently of any dismissal proceedings," he wrote, "were to terminate Professor Curran's functions as a teacher in the field of his competence, the removal would impinge upon his contractual rights and upon the proper autonomy of this university as understood in the context of the American academic tradition." "We believe," he concluded, "our recommendation does justice to both the canonical and the academic aspects of the matter."

On January 26, 1988, after listening to presentations by Professor Curran and his counsel, the board of trustees concluded that Professor Curran's canonical mission should be withdrawn, and it declined to act on the recommendation that Professor Curran continue to function as a professor in the field of his competence: "In making this recommendation," the board stated to the committee, "the Committee's Report appears to give insufficient consideration to the declaration of the Holy See that Father Curran is 'neither suitable nor eligible to teach Catholic theology.'" "When the canonical mission is withdrawn, the board added, the president will be instructed to explore possible alternative teaching arrangements.

In response, the chair of the *ad hoc* committee noted

on February 16 that the committee understood the board's statement to constitute a return of the proceedings to the committee with specific objections. The committee, he said, had reconsidered, taking into account the board's stated objections, and had reaffirmed the recommendations made in its report. To the board's contention that the committee had given insufficient consideration to the July 25, 1986, declaration of the Holy See, the committee chair replied as follows:

The Committee respectfully disagrees. . . . Because the Ecclesiastical Faculties have a canonical as well as civil status and because Church authorities confer the canonical mission as a qualification for teaching in such faculties, the Committee concluded that 'such a qualification may also be revoked by the official Church through an appropriate process established at an institution that chooses to affiliate itself with the Church.' . . . The Committee suggests, however, that the statement of Cardinal Ratzinger. . . is not controlling with respect to Professor Curran's ability to teach in any department outside an Ecclesiastical Faculty. In such departments the University must be guided by the American norms of academic freedom and tenure, including principles of academic competence and peer judgment, which the University has accepted and embodied in the Faculty Handbook.

On April 12, 1988, the board of trustees formally withdrew Professor Curran's canonical mission, noting in a press release that this action did not remove his tenure but did bar him from teaching in the Department of Theology. The board also authorized its chair, the chancellor, and the president "to enter into discussion with Father Curran concerning an alternative teaching assignment within an area of his professional competence."

Subsequent negotiations, concerning a reassignment of Professor Curran as a Professor of Christian Ethics in the Department of Sociology of the School of Arts and Sciences, broke down when Professor Curran objected to some of the conditions to which the administration expected him to subscribe—e.g., that students in the ecclesiastical faculties would not be permitted to take his courses for credit (a condition advanced by counsel for the administration but not reiterated in the final offer from President Byron) and that he would not be teaching Catholic theology at the university—and when he pointed out that, as a Catholic theologian, he would perforce be teaching social ethics from that perspective. On June 2, 1988, the board of trustees adopted a resolution stating that it "remains open to a teaching assignment for Father Curran" but not one that would allow him "to exercise the function of a Professor of Catholic Theology." As a consequence of the administration's action in 1987 to suspend him, Professor Curran had taken a leave of absence from the university to teach at Cornell University during the academic year 1987-88, and he continued on leave to teach at the University of Southern California during the academic years 1988-89 and 1989-90.

THE LEGAL CASE AND THE AAUP INVESTIGATION

On February 27, 1987, Professor Curran filed suit against the university in the Superior Court of the District of Columbia to have his suspension lifted, and,

following the withdrawal of his canonical mission, amended his complaint to ask that he be reinstated in his position as a Professor of Moral Theology in the

Department of Theology. After lengthy discovery and trial procedures, Judge Frederick H. Weisberg of the Superior Court decided in favor of the university on February 28, 1989. The Catholic University of America, he wrote,

wanted to be recognized as a university—a Catholic university, to be sure—but a full-fledged American university nonetheless. On the other hand, it continued to place transcendent value on its unique and special relationships with the Holy See. . . . On some issues—and this case certainly presents one of them—the conflict between the University's commitment to academic freedom and its unwavering fealty to the Holy See is direct and unavoidable. On such issues, the University may choose for itself on which side of that conflict it wants to come down, and nothing in its contract with Professor Curran or any other faculty member promises that it will always come down on the side of academic freedom.

On July 15, 1988, the associate general secretary of the American Association of University Professors informed President Byron by letter that, in the judgment of the general secretary, the case of Professor Curran "poses unresolved issues of key importance under standards that have gained general acceptance in the community of higher education," and he announced that an *ad hoc* investigating committee was being selected to report on the case. On September 26 he

provided President Byron with the names of the committee members. In response to the July 15 letter, President Byron expressed his willingness to cooperate with the committee, but he asked that the investigation be postponed until the conclusion of Professor Curran's court case.

The investigating committee's visit to Catholic University was accordingly scheduled for April 7 and 8, 1989, with arrangements for most of the interviews and for an interview room on campus made by the Association's chapter officers. The committee met at greatest length with Professor Curran and, in the president's office, with President Byron, who was accompanied by Mr. Kevin T. Baine, counsel for the university during the *ad hoc* committee and court proceedings; the executive vice president; and the university counsel. Other interviews were conducted with the academic vice president; the deans of the School of Religious Studies and the School of Arts and Sciences; a former president of the university; the president of the Academic Senate and members of the Senate's Committee on Academic Freedom and Tenure; the AAUP chapter officers; and several other faculty members who had been invited or had requested an opportunity to meet with the investigating committee. In addition, one faculty member submitted a letter to the committee. The committee was received courteously by all concerned.

THE ISSUES

The Letters from the Sacred Congregation

"On the spectrum of theological opinion today," wrote the board of directors of the 1,300-member Catholic Theological Society of America in December 1986, "Charles Curran's positions even regarding the points under dispute are found in the middle; moderate, nuanced, shared by a majority of well-known scholarly moral theologians." Witnesses at the hearings of the *ad hoc* committee of the Academic Senate had testified similarly: "middle of the road, not . . . extreme," he was called; "squarely within the mainstream"; "responsible." Why, then, if Professor Curran's views were "shared by a majority of well-known scholarly moral theologians," should the Sacred Congregation for the Doctrine of the Faith have singled him out for an inquisition spanning seven years and branded him alone as "neither suitable nor eligible to teach Catholic Theology"?

The investigating committee can only guess at the reasons, though at least one of them seems obvious. Beginning with the 1967 strike at Catholic University, Professor Curran had been something of a public figure. His books, addresses, and articles, along with his key role in the dissent to a portion of *Humanae Vitae*, had catapulted him into a leadership position among American theologians, reflected in his election to the highest offices in two societies and his selection as the first recipient of the John Courtney Murray Award. The continued outpouring of his articles in the 1970s, and of books at the rate of about one a year, helped to heighten an already high profile and to establish him almost as a symbol of the renewed vitality in American Catholic theology. A watchful organization like the Sacred Congregation for the Doctrine of the Faith could hardly have failed to notice a theologian who not only publicized his dissenting opinions but also provided

a rationale for what he described as responsible and faithful dissent.

Professor Curran, moreover, was affiliated with a university that prided itself on its special relationship with the Vatican. It had been established with a papal charter, its Canonical Statutes required papal approval, and, as a Pontifical university, its activities were inevitably of special interest to the Vatican. Pope John Paul II visited the university in 1979. This Congregation, Cardinal Ratzinger wrote in conveying the determination of the Sacred Congregation on July 25, 1986, "calls attention to the fact that you have taken your dissenting positions as a Professor of Theology in an Ecclesiastical Faculty at a Pontifical University."

It is possible also that, as the years wore on, the Sacred Congregation became increasingly vexed with Professor Curran's unyielding commitment to opinions that it found erroneous. "The purpose of this [final] letter," Cardinal Ratzinger wrote, "is to inform you that the Congregation has confirmed its position that one who dissents as you do is not eligible nor suitable to teach Catholic Theology." In their meeting with the investigating committee, President Byron and Mr. Baine argued that "as you do" referred to the *manner* in which Professor Curran dissented: perhaps to give scandal, to raise doubts in the minds of the faithful. A former dean of the School of Religious Studies presented a similar argument. The investigating committee does not accept their interpretation. No allegation of scandal can be found elsewhere in the seven-years' series of communications from the Sacred Congregation to Professor Curran, and this would have been an entirely inappropriate place to introduce one. The words "as you do" seem to have been supplied for emphasis, as Cardinal Ratzinger might have said of himself, "Writing on behalf of the Sacred Con-

gregation as I do. . . ." The committee *can* concede the possibility of one other purpose of the words, however: to suggest, at least vaguely, Professor Curran's persisting in dissent even after having been urged to recant by the Sacred Congregation. That is a theme of some of the Congregation's later communications.

With the Sacred Congregation's having submitted its determination to both Chancellor Hickey and Professor Curran, the initiative in the case passed from the Vatican to the university administration.

The Initial Administrative Action

On August 18, 1986, the day that he conveyed Cardinal Ratzinger's final letter to Professor Curran, Chancellor Hickey informed Professor Curran that he was initiating the withdrawal of his canonical mission and reminded him of his right to due process under the university's Canonical Statutes. On the next day President Byron, while expressing confidence that Professor Curran would continue to serve the Church, announced that, "given the Vatican declaration," he would not be able to do so as a member of the university's Department of Theology.

Under the Canonical Statutes, a faculty member whose canonical mission is to be withdrawn is entitled to due process in accordance with the procedures outlined in the faculty handbook (Part II, Section 4, Article 24). Under this article, the hearing body is prescribed as an *ad hoc* committee of the Academic Senate, and "the burden of proof that adequate cause exists [for action against the faculty member] rests with the institution, and shall be satisfied only by clear and convincing evidence in the record considered as a whole." President Byron's announcement was thus quite precipitate, an anticipation of a decision that a hearing body had not reached and was not yet in existence even to consider.

The Suspension

The university's Canonical Statutes provide that, "in more serious or pressing cases, the Chancellor, with the concurrence of a majority of the episcopal members of the Board, may suspend the member of the Faculty from teaching in an Ecclesiastical Faculty during the period of investigation." Under other provisions of the faculty handbook, which applied to any suspension outside the ecclesiastical faculties, "The faculty member will be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to himself or others is threatened by his continuance"—language that is identical with that in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* of the Association of American Colleges and the AAUP. With respect to suspension outside the ecclesiastical faculties, the faculty handbook provides that, "before suspending a faculty member, pending an ultimate determination of his status through the hearing procedures, the President or his representative will consult with the Committee on Academic Freedom and Tenure of the Academic Senate." The provisions for suspension in the Canonical Statutes do not set an "immediate harm" standard, nor do they call for consultation with the Senate's Committee. As do the other faculty handbook provisions, they call for payment of salary during the period of suspension.

Chancellor Hickey, proceeding under the Canonical Statutes provisions and apparently viewing the other

faculty handbook provisions as not required in Professor Curran's case, consulted with the episcopal members of the board of trustees before imposing the suspension, with continuing salary, on January 9, 1987. There was no consultation by the president or his representative with the senate's Committee on Academic Freedom and Tenure, nor was any indication given as to what immediate harm might be caused to Professor Curran or others by his resumption of teaching, outside as well as inside an ecclesiastical faculty, after his return from leave and pending the outcome of the *ad hoc* committee's deliberations.

Chancellor Hickey's conviction that suspension was necessary was forcefully conveyed in his January 9 letter to Professor Curran:

In my letter of December 19, I expressly solicited your response to this question: How can you be permitted to retain your canonical mission "to teach in the name of the Church," when the Holy See has expressly declared that you are "not suitable nor eligible to teach Catholic Theology"? In your response to this question, you state that your canonical mission may never be withdrawn if you are successful in your defense in the upcoming hearings. But you articulate no conceivable basis on which a decision could be reached to permit you to retain your canonical mission to teach in the name of the Church, when the highest authorities of the Church have expressly and finally declared that you are not suitable to teach Catholic Theology. As I stated in my letter of December 19, it is difficult to conceive of a more 'serious reason' to withdraw the canonical mission, or a 'more serious pressing case' for suspension.

The chancellor's determination was underscored on January 14 when he threatened to invoke Canon 812 to keep Professor Curran from the classroom.

Obviously the judgment of the Sacred Congregation for the Doctrine of the Faith, endorsed by the Congregation for Catholic Education and approved by Pope John Paul II, was entitled to great respect. It was not entitled to veneration. Cardinal Hickey was the chancellor and in important respects a chief administrative officer of a university with procedures that had been painstakingly developed out of such bitter experiences as the 1967 strike and the 1968 controversy over *Humanae Vitae*, and those procedures were themselves entitled to respect and observance. The senate's Committee on Academic Freedom and Tenure should have been consulted by the president or his representative before action was taken by the chancellor that had the effect of suspending Professor Curran from teaching outside as well as inside the ecclesiastical faculties. And the suspension should not have been invoked unless it could have been shown that, after twenty-one years of teaching at the Catholic University of America without apparent harm to anyone, Professor Curran's return to teaching would suddenly endanger either himself or others.

Due Process and Tenure

The *ad hoc* committee of the Academic Senate proceeded cautiously and deliberately. In a preliminary hearing it examined opposing counsel on what each considered the appropriate purpose of the full hearing. During the hearing each side was permitted to call and examine witnesses and to submit exhibits. A verbatim record of the hearing was kept and made avail-

able to both parties. And the committee, following the completion of its deliberations, issued an extensive report on its proceedings, the history of the case, and the issues involved in it, closing with a reasoned section of "Conclusions and Recommendations."

Counsel for Chancellor Hickey contended in the preliminary hearing that the Sacred Congregation's "deliberation was binding on the Committee as a matter of canon law" and that no further hearing was necessary, a position that reflects Chancellor Hickey's conviction that the committee could and should reach only one conclusion—that is, that "most serious reason" existed for removing Professor Curran's canonical mission and that it might therefore be removed. Counsel for Professor Curran argued that the Sacred Congregation's statement was not binding on the university and that the committee should consider countervailing evidence as well as the potential effects of withdrawing Professor Curran's canonical mission.

That the committee adopted this second approach seems to the Association's investigating committee both proper for a proposed action of such consequence to a tenured faculty member and consistent with the provisions of the faculty handbook. These provide that the burden of proof "shall be satisfied only by clear and convincing evidence in the record considered as a whole." The *ad hoc* committee saw very clearly not only that Professor Curran's canonical mission might be removed but also that his tenure, in fact if not in name, might be taken along with it, and it justly concluded that its mandate was much more comprehensive and complex than Chancellor Hickey believed it to be.

The committee carried out its task with meticulous attention to the rights of all concerned. Procedurally the chancellor and the board also acted with propriety. When they disagreed with some parts of the committee's recommendations, they sent the report back twice for reconsideration, the second time with a statement of specific objections. In keeping with the handbook procedures, the board also permitted Professor Curran and his counsel to make statements in the presence of the board before it arrived at a decision.

During the three or four weeks after the board withdrew Professor Curran's canonical mission, attempts were made to reach an agreement whereby he might resume teaching at the university in other than an ecclesiastical faculty, such as the Department of Religion and Religious Education of the School of Religious Studies. Offers were made which would involve his teaching in the Department of Sociology in the School of Arts and Sciences, but came to nothing largely because of restrictions that the administration insisted upon and Professor Curran found unacceptable. One of these was that he stipulate that he would not teach Catholic theology at Catholic University.

The impasse that developed had its basis in very different perceptions of the force and intent of the Sacred Congregation's July 25, 1986, declaration. The *ad hoc* committee, as noted earlier, had not accepted the view that the declaration left it no alternative but to consent to the withdrawal of the canonical mission: it insisted upon certain conditions before it would give its approval, the most significant of which was that Professor Curran be found a place at the university "in the field of his competence... moral theology and/or ethics." Behind the committee's refusal to respond as Chancellor Hickey had wished, and perhaps expected,

was its conviction that, when the Canonical Statutes were approved by the board of trustees and the Vatican in 1981, the provision for a hearing before a committee of the Academic Senate was intended to elicit a carefully considered faculty judgment; it was by no means merely a device for endorsing a chancellor's decision to withdraw a canonical mission. The committee also acted upon the assumption that it should hear the case for withdrawal of Professor Curran's canonical mission with the same care and authority with which it would hear a case for dismissal.

As for the Sacred Congregation's declaration, Chancellor Hickey and the board of trustees never seemed to entertain a doubt that it constituted a total interdiction—that Professor Curran could not again teach Catholic theology at Catholic University. That interpretation, however, while it does justice to the words of the declaration, does not do justice to their context:

This Congregation calls attention to the fact that you have taken your positions as a Professor of Theology in an Ecclesiastical Faculty at a Pontifical University. In its letter of September 17, 1985 to you, it was noted that "...the authorities of the Church cannot allow the present situation to continue in which the inherent contradiction is prolonged that *one who is to teach in the name of the Church in fact denies her teaching.*"

The Sacred Congregation's expressed concern was that Professor Curran not teach in the name of the Church in an ecclesiastical faculty. But with the withdrawal of Professor Curran's canonical mission the "inherent contradiction" that disturbed the Sacred Congregation was resolved, for he no longer possessed the authority to teach in the name of the Church. Had he been permitted, moreover, to accept a position in the Department of Religion and Religious Education, which was eager to have him and which he was quite willing to join, he would no longer have been teaching in an ecclesiastical faculty. Under the circumstances, it was unnecessary and, in the investigating committee's judgment, improper, for the administration and the board of trustees to place any restrictions on Professor Curran's teaching and, particularly, to insist that he not teach Catholic theology at Catholic University.

When Professor Curran was awarded tenure in 1971, he was adjudged competent by his faculty colleagues and the board of trustees and was assured of the right to teach in his area of competence until his retirement, subject to dismissal only for adequate cause established through due process. Even though he remains on leave of absence and thus nominally a member of the faculty, in not being permitted to teach Catholic theology, in a non-ecclesiastical as well as an ecclesiastical department, he has for all practical purposes been deprived of his tenure without due process and without adequate cause. The outcome that the *ad hoc* committee tried to prevent became a reality through the persistent adherence of the administration and the board to positions that this investigating committee finds untenable.

Academic Freedom

Ultimately Professor Curran lost his position in Catholic University's Department of Theology because of opinions expressed in his published works. As far as the investigating committee knows, no one in the

university's administration had publicly raised questions about them, at least after the inquiry into the protest against *Humanae Vitae* in 1969. Had it not been for the intervention of the Sacred Congregation for the Doctrine of the Faith, Professor Curran would undoubtedly still be active in the university's Department of Theology, a popular teacher, honored theologian, and respected colleague.

Under the 1940 *Statement of Principles on Academic Freedom and Tenure*, a joint statement of the Association of American Colleges and the American Association of University Professors endorsed by some 130 educational and professional organizations, "The teacher is entitled to full freedom in research and in the publication of the results. . . . Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment." Catholic University has no statement labeled "Limitations," although one or two statements in the faculty handbook, which was given to all faculty members, suggest limitations related to the university's religious aims. In Part I (p. 33) the university is called "Faithful to the Christian message as it comes through the Church and faithful to its own national traditions." A more relevant statement, applying explicitly to faculty members in the Ecclesiastical Faculties, is contained in the Canonical Statutes: "These norms and practices concerning appointments to the Faculties are intended to assure fidelity to the revealing Word of God as it is transmitted by tradition and interpreted and safeguarded by the Magisterium of the Church and to safeguard academic freedom" (p. 10).

A faculty member, formerly dean of the School of Religious Studies, who had a main role in preparing this statement, informed the investigating committee that he looked upon it as a statement of limitations on both the faculty and the magisterium: the first part was addressed to the faculty and the second to the magisterium. He noted also that the statement was not intended to preclude dissent from noninfallible teaching.

Nor, apparently, had the university administration taken any other view, at least since a year or two after the 1968 pastoral letter of the National Conference of Catholic Bishops, "Human Life in Our Day," acknowledged the right of dissent from noninfallible teachings of the magisterium for "serious and well-founded reasons," provided "the manner of the dissent does not question or impugn the teaching authority of the Church and is such as not to give scandal." These were the guidelines that Professor Curran and apparently scores, if not hundreds, of other Catholic theologians accepted as controlling. His dissent, Professor Curran stated, was only from those noninfallible teachings that "are on the level of complex, specific actions which involve many conflicting circumstances and situations. . . ." and no individual or body has charged otherwise.

The president, chancellor, and board of trustees seemed all too ready, nonetheless, to conclude that the Sacred Congregation's declaration was controlling and that withdrawal of Professor Curran's canonical mission had to follow as a matter of course. Under the chancellor's pinched interpretation of Cardinal Ratzinger's letter, in which he was joined by the board of trustees, Professor Curran, who had shown a will-

ingness to compromise, was not to teach Catholic theology in any form, a grievous penalty for one whose whole career had been in Catholic theology and whose stature in that field had brought honor to the university. In contrast to the administration and the board, the *ad hoc* committee of the Academic Senate perceived the need to protect both Professor Curran's academic freedom and the university's autonomy, which it saw being eroded by their actions.

Both were major issues, although the issue of greater consequence to Professor Curran was academic freedom. In forcing Professor Curran to relinquish all teaching of Catholic theology at Catholic University, the administration and the board of trustees violated his academic freedom; for they were moved to their decision by a declaration of the Sacred Congregation for the Doctrine of the Faith based upon publications that were protected by academic freedom under the 1940 *Statement of Principles* and the policies of Catholic University itself.

The role of the board of trustees in this connection raises some puzzling questions. At least sixteen of the board's twenty clerical members were required to be members of the National Conference of Catholic Bishops. They were members, in short, of the very body that had set the tone for Catholic theological discussion in the United States since 1968. How could they have not spoken out while Professor Curran was subjected to the humiliation of a seven-year inquisition for exercising a right to dissent that the American bishops' own statement had acknowledged? And how could they have endorsed the chancellor's actions to penalize Professor Curran for following the guidelines the bishops themselves had laid down? Surely they might have asked, as Professor Curran did, if the Sacred Congregation for the Doctrine of the Faith agreed with the teaching of the American bishops in "Human Life in Our Day" or rejected it as wrong. And surely they must have been concerned by Cardinal Ratzinger's blurring of the distinction between infallible and noninfallible teaching, which was a foundation stone of the teachings in "Human Life in Our Day."

"In grave crises," states the *Joint Statement on Government of Colleges and Universities* formulated by the American Council on Education, the Association of Governing Boards of Universities and Colleges, and the American Association of University Professors in 1966, "it [the board of trustees] will be expected to serve as a champion" to support the institution or any part of it against "ignorance or ill-will." The university's autonomy and the academic freedom of its faculty may not have been important to the Sacred Congregation, but they should have been of first importance to the board of trustees. And who can say with assurance that this was not a crisis in the university's affairs, if not in those of Catholic higher education generally? Although initially the inquiry of the Sacred Congregation affected only Professor Curran, its repercussions have been felt throughout the university and far beyond its bounds. For the message that has been sent to Professor Curran—that a "middle of the road" theologian in an ecclesiastical faculty should not have relied on the teachings of "Human Life in Our Day"—may in time be applied, for all anyone knows, to other theologians who share Professor Curran's views, whether or not they teach in an ecclesiastical faculty.

The board by its complicity in the actions against Professor Curran thus failed to protect academic freedom and the university's autonomy, two essential conditions of the kind of university that the Catholic University of America considered itself to be. "As a University," the faculty handbook states under "Aims of the University," the Catholic University

is essentially a free and autonomous center of study and an agency serving the needs of human society. It welcomes the collaboration of all scholars of good will who, through the process of study and reflection, contribute to these aims in an atmosphere of academic competence where freedom is fostered and where the only constraint upon truth is truth itself (Part I, p. 32).

And in 1971, as was noted earlier, the university reported to the Middle States Association of Colleges and Schools that a "university conceived as a community of scholars must be free of arbitrary and extrinsic constraints, be they civil or ecclesiastical. Institutional autonomy and academic freedom are essential conditions of university life and growth." In the light of the present case, the investigating committee must wonder if the university could in good conscience make the same statement to the Middle States Association today.

The university, however, recovered quickly from failures of its leadership in 1967 and 1969, and it has the resources to recover quickly again. The Academic Senate, as it had done before, took the lead on March 16, 1989, by reaffirming the principles of academic free-

dom and institutional autonomy and by pointing to the need for cooperative efforts among faculty, administration, and the trustees if the university is to maintain its academic integrity as well as its Catholic character. Expressing its conviction "that the principles of academic freedom apply to all disciplines at this University, including the sacred sciences," the senate invited members of the various faculties "to undertake a dialogue within their respective Schools in order to develop a common understanding of academic freedom at this University," and it asked the deans of the schools for reports on the results of the dialogues. Statements on academic freedom were received by the senate from each of the schools and distributed to the respective deans for the faculty at large. On May 2, at the direction of the senate, a "community meeting" on academic freedom was held, with President Byron and the university attorney participating together with other administrators, faculty members, and student representatives. On May 11, the senate approved two resolutions on academic freedom. The first reaffirms the senate's 1969 statement on academic freedom (with its acceptance of the Association's *Recommended Institutional Regulations* as normative) and refers it to the board of trustees for use in a further statement on academic freedom to be agreed upon by the senate and the board. The second resolution calls for review of all sections of the faculty handbook relating to academic freedom so as to ensure the exercise of academic freedom by all faculty members at Catholic University.

CONCLUSION

1. In suspending Professor Charles E. Curran without consulting with the Committee on Academic Freedom and Tenure of the Academic Senate and without showing that his return to teaching posed a threat of immediate harm to himself or others, the administration of the Catholic University of America acted in disregard of the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.

2. Except for the errors relating to suspension, the requirements of procedural due process in the consideration of Professor Curran's canonical mission were meticulously observed.

3. By not permitting Professor Curran to teach Catholic theology in a non-ecclesiastical department of the university, the administration and the board of trustees for all practical purposes deprived him of his tenure without due process and without adequate cause.

4. In penalizing Professor Curran for reasons that had their basis in publications by him protected under the university's stated policy on academic freedom and the 1940 *Statement of Principles on Academic Freedom and Tenure*, the administration and the board of trustees violated Professor Curran's academic freedom.

5. The administration, and particularly the board of trustees, failed in the case of Professor Curran to exercise their responsibility to protect the university's autonomy and the academic freedom of the faculty.

BERTRAM H. DAVIS (English), Florida State University, *Chair*

RICHARD G. HUBER (Law), Boston College

SCHUBERT M. OGDEN (Theology), Southern Methodist University

Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report in *Academe: Bulletin of the AAUP*.

MATTHEW W. FINKIN (Law), University of Illinois, *Chair*.

Members: JOAN S. GIRGUS (Psychology), Princeton University; PAUL A. KETCHUM (Biology), Oakland University; DANIEL C. MAGUIRE (Theology), Marquette University*; THOMAS D. MORRIS (History), Portland State University; JOEL T. ROSENTHAL (History), State University of New York at Stony Brook; EDWARD F. SHERMAN (Law), University of Texas at Austin; SAUL TOUSTER (Legal Studies), Brandeis University; WILLIAM W. VAN ALSTYNE (Law), Duke University; ERNST BENJAMIN (Political Science), Washington Office, *ex officio*; JORDAN E. KURLAND (History and Russian), Washington Office, *ex officio**; CAROL SIMPSON STERN (Performance Studies), Northwestern University, *ex officio*; RALPH S. BROWN (Law), Yale University, *consultant*; BERTRAM H. DAVIS (English), Florida State University, *consultant**; MARY W. GRAY (Mathematics), American University, *consultant*; JUDITH J. THOMSON (Philosophy), Massachusetts Institute of Technology, *consultant*; WALTER P. METZGER (History), Columbia University, *senior consultant*.

*Did not participate in the vote.

ADDENDUM

Comments from Counsel for the Administration of the Catholic University of America

On July 25, 1986, the Congregation for the Doctrine of the Faith, with the explicit approval of the Pope, declared that the Reverend Charles E. Curran was neither "suitable nor eligible to teach Catholic Theology." That declaration was issued in the exercise of the Congregation's supervisory authority over Catholic theologians and their work. Father Curran has acknowledged that the Holy See's declaration was a "disciplinary" decision by his ecclesiastical superiors, and that it was "binding" upon him as a matter of Church law. Rather than comply with the Holy See's binding judgment, however, Father Curran has sought to continue teaching Catholic theology at the Catholic University of America in defiance of that judgment. As he explains it, he "dissent[s]" from the Holy See's declaration, and "ask[s] . . . the University to join [him] in dissenting" from it.

After a full hearing, the university has refused to let Father Curran teach Catholic theology, while at the same time seeking in good faith to find subjects within his competence that he can teach consistently with the Holy See's declaration. After a lengthy trial, Judge Frederick Weisberg of the Superior Court of the District of Columbia ruled that the university's actions did not violate its guarantee of academic freedom to Father Curran. As the court explained:

No one—least of all a Catholic priest and a Professor of Catholic Theology—could have contracted with CUA without understanding the University's special relationship with the Roman Catholic Church, with all of the implications and obligations flowing from that relationship. Indeed, Professor Curran testified that in fact he did understand at all relevant times that this special relationship existed. As much as he may have wished it otherwise, he could not reasonably have expected that the University would defy a definitive judgment of the Holy See that he was "unsuitable" and "ineligible" to teach Catholic theology.

The university, the court added, was "obligated to accept the declaration of the Holy See . . . as a matter of religious conviction and pursuant to its longstanding, unique and freely chosen special relationship with the Holy See." Father Curran chose not to appeal the court's decision.

The AAUP's investigating committee virtually ignores Judge Weisberg's decision and the considerations that support it. Stretching to justify its own conclusion that the university violated Father Curran's academic freedom, the committee misconstrues the Holy See's declaration, disregards the distinct character of Catholic theology and the unique relationship of the university to the Holy See, mischaracterizes the university's actions, and substitutes its own standards for the university's. The university has submitted a

42-page statement of objections to a draft of the committee's report. What follows is merely a brief summary of some of its principal objections.

1. The investigating committee evidently agrees that the Holy See's declaration justified removing Father Curran from the Department of Theology. It concludes, however, that the university should have offered him a position teaching Catholic theology outside the Department of Theology. That resolution, the committee suggests, would have satisfied the Holy See's concerns. The committee, however, completely misconstrues the intended scope of the Holy See's declaration. Father Curran himself acknowledged in his testimony that the Holy See's declaration speaks to his "eligibility to teach Catholic theology anywhere at the University," in "any department." There is an inescapable conflict between Father Curran's desire to continue teaching Catholic theology at the university and the Holy See's declaration that he is unsuitable and ineligible to do so. The committee cannot eliminate that conflict by pretending it does not exist.

2. The Catholic University of America cherishes academic freedom, but academic freedom is not an absolute. Academic freedom may be limited by the religious aims of the institution, as the committee notes, and by the peculiar norms of the discipline. The physicist is not free to ignore the data of the laboratory. A Catholic theologian is not free to disregard Church teachings, which constitute indispensable data for Catholic theology. By its very nature, *Catholic* theology requires respect for, and fidelity to, the Church's teachings. That requirement can hardly be ignored by an institution like the Catholic University of America, which has always claimed a "unique relationship with the Holy See and the entire Catholic community" and "a responsibility to the Church in the United States that is special to it."¹ Nowhere is the university's responsibility to the Church greater than in the discipline of Catholic theology. Thus, the university's stated aims provide: "Faithful to the Christian message as it comes through the Church . . . , the Catholic University has unique responsibilities to be of service to Christian thought and education in the Catholic community . . ."² And the university's Canonical Statutes provide for academic freedom in the context of "fidelity to the revealing Word of God as it is transmitted by tradition and interpreted and safeguarded by the Magisterium of the Church . . ."³

The board of trustees considered the issue of academic freedom in this case, as well as the appropriate

¹Goals of the Catholic University of America, Part I, at 34A.

²Aims of the University, Faculty Handbook, Part I, at 33.

³Canonical Statutes of the Ecclesiastical Faculties of The Catholic University of America, § V. 11.

qualifications upon academic freedom in the field of Catholic theology at the university. Based upon a determination that Father Curran had failed to show the proper respect for, and fidelity to, the Church's teachings, the board concluded that he had exceeded the bounds of academic freedom. The board did not decide, as the committee implies, that anyone who questions or disagrees with any Church teaching necessarily renders himself or herself ineligible to teach Catholic theology. University officials—including the chair of the board, the president and the chancellor—have disclaimed any such position. And the university continues to assure freedom of inquiry to its professors of Catholic theology, consistent with the norms of that discipline.

3. The university did not revoke Father Curran's tenure. Nor did it terminate his employment or prohibit him from teaching subjects in his area of competence. The university offered Father Curran the opportunity to teach social ethics courses—specifically, *Ethical Issues in Economic Life* and *Ethical Reflections on the Problems of War and Peace in Contemporary Society*—that Judge Weisberg found he was perfectly competent to teach. In 1987, an Academic Senate committee of his peers defined Father Curran's area of competence as "moral theology and/or ethics." And in his initial complaint against the university, Father Curran also described his areas of competence as "theology and ethics." After the university offered him a position teaching ethics, however, Father Curran amended his complaint to say that his sole area of competence was "Catholic moral theology." And in his testimony at trial, Father Curran confirmed that "there could never be an agreement between [him] and the Catholic University unless the University recognizes that [he] may teach Catholic theology."

The record shows that the university went to great lengths to find an acceptable teaching position in an area of Father Curran's competence, but that the university's efforts were frustrated by his insistence

that he be permitted to teach Catholic theology in defiance of the Holy See.

4. The committee concludes that the university's chancellor, James Cardinal Hickey, "acted in disregard of the 1958 *Statement on Procedural Standards in Faculty Proceedings*" by suspending Father Curran from teaching without finding "immediate harm" and without having the president consult with the Academic Senate's Committee on Academic Freedom and Tenure. Father Curran's suspension, however, was governed exclusively by the university's Canonical Statutes, which, as the committee notes, contain no such requirements. Father Curran's only position with the university was as a professor in the Department of Theology, which is an ecclesiastical faculty. The university's Canonical Statutes empower the chancellor to suspend a faculty member from teaching in an ecclesiastical faculty if, after (1) consulting with the respective dean and chairman, (2) affording the faculty member notice and an opportunity to be heard, and (3) securing the concurrence of a majority of the bishops on the board, (4) the chancellor finds that the case is a "more serious or pressing" one. There is no requirement that the chancellor find "immediate harm" when he follows these procedural steps.

The university, in short, has modified the AAUP's recommended suspension procedures in its ecclesiastical faculties. The AAUP cannot substitute its own recommended procedures for those that were adopted by the university's Academic Senate and board of trustees. The chancellor meticulously observed the university's own statutes, and that is all he was required to do.

5. In the final analysis, an institution must be faithful to its own goals and objectives. Judged by that standard, the university's actions in this case have been vindicated completely by a fair and impartial trial judge who presided over a lengthy trial, heard from all of the relevant witnesses, and considered all of the relevant facts.